

# employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

## Final Funding Regulations and Benefit Restriction Notices for Single Employer Defined Benefit Plans

The IRS and the Treasury Department recently released [final regulations](#) under [§430](#) and [§436](#) that provide guidance on:

- determining the value of plan assets and benefit liabilities for funding requirement purposes in single employer defined benefit pension plans;
- using certain funding balances maintained for single employer defined benefit pension plans; and
- applying benefit restrictions to certain underfunded defined benefit pension plans.

Many plans will have certified their [adjusted funding target attainment percentage](#) (AFTAP) by October 1, 2009, and in certain cases may be subject to benefit restrictions. Plans subject to certain benefit restrictions are, under [§101\(j\) of the Employee Retirement Income Security Act of 1974](#) (ERISA), as amended, required to notify participants and beneficiaries within 30 days after these restrictions are imposed.

Under the [Worker, Retiree, and Employer Recovery Act of 2008](#) (WRERA), the IRS, in consultation with the [Department of Labor](#), has authority to prescribe rules applicable to the notice of funding-based limitations under §101(j) of ERISA.

The IRS has received questions as to how §101(j) of ERISA would apply to participants and beneficiaries who are not directly or indirectly affected by the funding-based limitations. In particular, we have heard that when a plan can only pay half lump sums under §436(d)(3) of the Code, notice should not have to be given to participants or beneficiaries in pay status, because they could not elect a lump sum distribution even if the plan were not subject to the half lump sum limitation. We recognize that not having to provide notice to participants and beneficiaries to whom the limitation could have no application would reduce costs, administrative burdens and participant confusion. Accordingly, we agree that §101(j) of ERISA does not require notice of a benefit restriction affecting the availability of lump sums to participants and beneficiaries in pay status who -- without regard to any §436 limitation -- can no longer elect a lump sum payment. The IRS expects to provide for this in upcoming guidance on §101(j) of ERISA.

## Phone Forum on Retirement Plan Distributions - October 28, 2009

Join Martin Pippins and Rhonda Migdail, from IRS Employee Plans Rulings & Agreements, for a 90 minute [forum](#) on recent retirement plan guidance. The forum will cover:

- the new required §402(f) notice;
- rollovers, including the expanded Roth rollover rules;
- the 2009 required minimum distribution (RMD) waiver;
- RMD rules for governmental plans; and
- paid time off contributions.

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